IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 25.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Writ Petition No.20341 of 2006
& Miscellaneous Petition No.1 of 2006

R.Aravazhi ... Petitioner

Vs.

1. The Secretary,
The Selection Committee,
The Director of Medical Education,
No.162, E.V.R. Periyar High Road,
Kilpauk, Chennai-10.

2. The Secretary to Government,
Health Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of declaration as stated therein.

For Petitioner : Mr.Sirajudeen
for M/s.Siraj & Siraj
For Respondents : Mr.M.Sekar, Special Government Pleader.

O R D E R

P.SATHASIVAM, J.

Dr.R.Aravazhi has filed the above Writ Petition seeking for the issuance of a writ of declaration to declare that Clause 50 (b) of the Prospectus issued by the first respondent for the selection of candidates for admission to the Super Speciality Courses in Tamil Nadu Government Medical Colleges for the session 2006-2007 is null and void and arbitrary and consequently direct the first respondent to select the candidate for super speciality course "D.M. Cardiology" in the Tamil Nadu Government Medical Colleges for the session 2006-2007 without awarding any mark for their service in Primary Health Centres.

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2. The case of the petitioner, in brief, is stated hereunder:-

According to him, he belongs to a Most Backward Community and studied M.B.B.S. in Tanjore Medical College, later; he completed M.D. (General Medicine) in Madurai Medical College in March, 2001. After completing the same, he joined the medical services of the second respondent on 31.05.2001 and was posted to the Primary Health Centre (hereinafter referred to as PHC) in Tiruvillimalai. After eight months of service there, he was transferred to the Government Hospital in Nagapattinam on 04.02.2002. Thereafter, he has been posted in Government Theni Medical College Hospital.

The second respondent herein, viz., Secretary to Government, Health Department, Government of Tamil Nadu, offered a Super Speciality Course under the name 'D.M. Cardiology' in its hospitals. Every year, 8 students are selected for the said course and the selection process is done by the 1st respondent/Selection Committee, ie., the Director of Medical Education, Chennai-10. In order to select 8 students, the 1st respondent issued the prospectus for the session 2006-2007 and the course is of three year duration. The petitioner purchased the prospectus from the 1st respondent and applied to join the course. As per the selection procedure as given in the Prospectus, out of 8 seats, 4 seats are reserved for service candidates and the remaining 4 seats are earmarked for general category.

As per the Prospectus, the first respondent would conduct the written examination for 90 marks. Apart from the marks scored in the examination, for the service after enrollment, maximum of 10 marks are given. After making an application, the petitioner wrote the examination and along with the marks for his service after post graduation, he scored 64.63 marks out of 100 marks. The fraction of the marks as published in the internet clearly shows the importance of every point in the selection process. While so, on 28.06.2006, he received a telegram from the first respondent asking him to attend the counselling to be held on 03.07.2006 at Chennai. Thereafter, he verified the list published in the internet by the first respondent and found that he was placed in the 10th position in the over all merit list and one Ravi, who was placed in the 26th rank, was included and shown in the 6th place. He also found that the first respondent, in addition to the service of the candidate after getting postgraduate degree, also gave additional mark for the service rendered by the candidate in PHCs before they joined post graduate degree. The said Ravi had joined the medical service immediately after graduation as a doctor and, after six years of service in PHC, he joined his post graduate degree and thereafter, he finished the same. For his service in PHCs, he has been given 6 marks in addition to other marks.

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Selection to the Super Speciality Courses has to be made only on merit in the written examination. The factors that are not at all relevant to decide the merit should not be taken into account. The practice of a doctor before acquiring the basic qualification to join a course and his service in a particular class of hospitals cannot be a valid or reasonable criterion to award more marks in order to disturb the seniority and merit list that was prepared after writing the examination. Further, the post graduate doctors, though they are willing to serve in the PHC, are not at all permitted by the rules to serve in PHC. PHCs are not restricted to rural areas. Though initially the petitioner was posted to PHC, subsequently, he was transferred from there as he got the P.G. Degree, hence, there is a clear discrimination between the candidates who joined the Government Service for the first time after completing post graduation and other candidates who joined the medical service after their graduation and continued their service and did post graduation and thereafter applied for Super Speciality Course. This kind of discrimination is not at all justified. Awarding of 10 marks for the service in PHCs is not having any nexus with the merit of the candidate. The first respondent is giving one mark for every year completed after post graduation and this mark is given irrespective of the fact that the applicant rendered his service in Government Hospital or Private Hospital or even kept quiet without practice. On the other hand, the employment in PHCs is taken as a criterion whereas their service in other hospitals whatever may be the reputation of the private hospital or the place of practice is not at all taken into consideration.

3. The respondents have not filed counter affidavit, however, learned Special Government Pleader, on instruction, put forth his contentions.

4. Heard Mr.Sirajudeen, learned counsel for petitioner and Mr.M.Sekar, learned Special Government Pleader for respondents.

5. Mr.Sirajudeen, learned counsel for the petitioner, after taking us through the relevant clause in the Prospectus, which is impugned in this petition, and all other materials, contended that admission to Super Speciality Course can only be made on the basis of merit and that, though the Government can fix source of person, further classification is impermissible. He also contended that, even if it is accepted that one mark for one year service in PHC is a weightage, the maximum being 10 marks, the same is disproportionate to the object sought to be achieved.

6. Mr. Sekar, learned Special Government Pleader, contended that, first of all, there is no reservation for persons working in the PHCs. He further contended that the power of the

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State Government to identify the source of admission is approved by Courts in various decisions. The State Government has identified the service candidates serving in rural areas and to make them eligible to compete for admission, weightage of one mark for each year of service upto the maximum of 10 marks is awarded. According to him, award of marks to the service candidates is only to encourage the doctors to serve in rural areas as there is large scale of reluctance on the part of the doctors to serve in the rural areas. Award of marks to the said service candidates cannot be termed as discriminatory as the Doctors serving in urban areas cannot be equated to the doctors serving in rural areas. He finally contended that having participated in the selection process; the petitioner cannot be permitted to challenge the Prospectus.

7. In order to appreciate the rival contentions, it is useful to refer to the relevant clause in the Prospectus, which is under challenge in this Writ Petition.

" Prospectus

GENERAL INSTRUCTIONS:-
……
……

MERIT LIST:-
49. ……

50. a) The Individual Marks (Service/Non-service) is calculated by computing the marks secured by the Candidate in the Entrance Examination and Service Marks of one mark for each year after completion of the P.G.Degree which is calculated from the last date of the month of passing Examination. (E.G. If a candidate scores 50 marks out of 90 marks in Entrance Examination and completed Two Years after P.G. Degree on the date of Entrance Examination, his/her total Aggregate Marks will be 50+2=52)

b) Service candidates will be awarded one mark for every year of Rural service under the Director of Medical & Rural Health Services or Director of Public Health controlled Institutions up to a maximum of 10 marks. These rural service marks as on the date of Entrance Examination will be added to the total aggregate marks while preparing the merit list. Rural Service marks will be calculated based on the

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length of service rendered in Primary Health Centres alone.

…… ”

8. It is not in dispute that the petitioner belongs to Most Backward Community and that, after completion of his MBBS, he also completed M.D.(General Medicine). At the relevant time, the petitioner was working in Government Theni Medical College Hospital. It is also not in dispute that the 2nd respondent has been offering Super Speciality Course under the name ‘D.M. Cardiology’ in its Hospitals. 8 seats have been earmarked for D.M. Cardiology. The selection process is done by the first respondent. Out of 8 seats, 4 seats are reserved for the in-service candidates and the remaining 4 seats for general category. Clause-49 of the Prospectus shows that the merit list for each discipline of the Higher Speciality course will be prepared by computing the entrance examination marks and service marks, which will be calculated to a maximum of 100 (Entrance Examination marks 90 + Service Marks 10). It further shows that Rural Service Marks will be added to the total aggregate marks of the service candidates. Clause-50.b. makes it clear that the service candidates will be awarded one mark for every year of Rural service under the Director of Medical & Rural Health Services or Director of Public Health Controlled Institutions up to a maximum of 10 marks. It further shows that these rural service marks as on the date of Entrance Examination will be added to the total aggregate marks while preparing the merit list. Clause-b makes it further clear that rural service marks will be calculated based on the length of service rendered in Primary Health Centres alone.

9. Mr.Sirajudeen, learned counsel for the petitioner, at the foremost, relied on the decision of the Apex Court reported in AIR 1980 SC 820 (Jagdish Saran v. Union of India) and contended that the course being super speciality, merit alone should be given credence. The factual details relating to the above referred case law show that it is a case relating to reservation. The Delhi University reserved 70% seats to the Graduates from Delhi and 30% for others. The petitioner, who was not selected for the post graduate degree in Dermatology, challenged the reservation policy. Disowning the policy adopted by the Delhi University, the Supreme Court held, "if equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks". Their Lordships further held that the rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or like disadvantage. The quantum of reservation should not be excessive or societally injurious, measured by the over-all competency of the end-product, viz., degree-holders.

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As said at the beginning, the above case law pertains to reservation in allotment of seats in P.G./higher speciality courses in Medical Sciences.

10. Next decision relied on is AIR 1999 SC 2894 (Preeti Srivastava vs. State of Madhya Pradesh). The issue before the Constitution Bench was, whether apart from providing reservation for admission to the Post-Graduate Courses in Engineering and Medicine for special category candidates, it is open to the State to prescribe different admission criteria, in the sense of prescribing minimum qualifying marks for special category candidates seeking admission under the reserved category. The following conclusion in para No.23 is pressed into service:-

> " 23. This Court has repeatedly said that at the level of super-specialisation there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of professional and educational training. At the level of a super speciality, something more than a mere professional competence as a doctor is required. A super-specialist acquires expert knowledge in his speciality and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in the form of new innovative techniques or new knowledge to fight diseases. It is in public interest that we promote these skills. Such high degrees of skill and expert knowledge in highly specialized areas, however, cannot be acquired by anyone or everyone. For example, specialized sophisticated knowledge and skill and ability to make right choices of treatment in critical medical conditions and even ability to innovate and device new lines of treatment in critical situations, requires high levels of intelligent understanding of medical knowledge or skill and a high ability to learn from technical literature and from experience. These high abilities are also required for absorbing highly specialized knowledge which is being imparted at this level. It is for this reason that it would be detrimental to the national interest to have reservations at this stage. Opportunities for such training are few and it is in the national interest that these are made available to those who can profit from them the most viz., the best brains in the country, irrespective of the class to which they belong."

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11. The decision reported in AIR 2000 SC 72 (Narayan Sharma vs. Pankaj Kr. Lehkar) also deals with a case pertains to reservation in P.G. medical course.

12. The above referred decisions make it clear that, at the level of super-specialisation, there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of profession. It was also made clear that, at the level of super-speciality, something more than a mere professional competence as a doctor is required.

13. In the decision reported in AIR 2003 SC 2952 (State of Madhya Pradesh v. Gopal D.Tirthani), the Hon'ble Supreme Court had an occasion to consider the reservation rule of the State of Madhya Pradesh allocating 20% seats in post graduation in the Universities of Madhya Pradesh for in-service candidates. The main question that was posed before the Supreme Court was, whether weightage can be given to doctors for their having rendered the specified number of years of service in rural/tribal areas. While answering the said question, Their Lordships have relied on the decisions reported in AIR 1986 SC 1877 (Dr.Dinesh Kumar v. Motilal Nehru Medical College, Allahabad) & AIR 1975 SC 563 (State of U.P. v. Pradip Tandon) and concluded that assigning weightage for rural service rendered as Assistant Surgeons and carving out a classification in favour of women candidates conferring them with eligibility for seeking admission in post-graduate courses by rendering 3 years' consecutive service in rural areas satisfy the twin tests of Article 14 of the Constitution. The Madhya Pradesh State Government framed Madhya Pradesh Medical and Dental Post-Graduate (In-service) Admission Rules, 2002. For the purpose of selection of candidates, who are in-service, following weightage in marks was assigned,

> " a. 30% marks on the basis of individual integrated performance at the first, second and third MBBS examination.
>
> b. 30% marks will be given on the basis of length of service in the rural/tribal areas.
>
> 2 marks will be awarded for every 6 months of service in a rural area.
>
> 1 additional mark will be given if this area falls under the tribal sub-plan.
>
> Thus any candidate, who has served for five years in a rural area under a tribal sub-plan area, can earn a maximum of 30 marks under this criterion, similarly, for serving five years in a rural area other than tribal sub-plan area, the candidate will get a maximum of 20 marks. "

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After referring to the earlier decisions including AIR 2001 SC 717 (K.Duraiswamy v. State of Tamil Nadu), the Apex Court upheld the rules assigning weightage for rural service rendered as Assistant Surgeon. In para No.36, while summing up their conclusion, Their Lordships have held thus:-

> " 36. We sum up our conclusions as under:-
>
> 1. ….
> 2. ……
> 3. ……
>
> 4. It is permissible to assign a reasonable weightage for service rendered in rural/tribal areas by in-service candidates for the purpose of determining inter se merit within the class of in-service candidates who have qualified in the Pre-PG test by securing the minimum qualifying marks as prescribed by the Medical Council of India."

14. We have already referred to the relevant clause in the guidelines, which prescribes one mark for every year of rural service under the Director of Medical & Rural Health Services or Director of Public Health controlled Institutions upto a maximum of 10 marks. The Rule also makes it clear that Rural Service marks will be calculated based on the length of service rendered in Primary Health Centres alone.

15. The principles laid down by the Hon'ble Supreme Court in State of Madhya Pradesh vs. Gopal D.Tirthani (cited supra) would be squarely applicable to the case on hand. As rightly argued by the learned Special Government Pleader, weightage of one mark for each year of rural service cannot be considered to be a reservation. The Special Government Pleader, on specific instruction, brought to our notice that the Doctors are reluctant to serve in rural areas and that the service put in by the Doctors, serving in rural areas, must therefore be given some weightage in admission to Higher Speciality Courses. As rightly pointed out, first of all, they serve in rural areas; secondly, Doctors with higher speciality are required for service in rural areas; and finally, Doctors serving rural areas do not have the modern facility attached to the government as well as private specialized hospitals, therefore, it is the bounden duty of the State to encourage the service doctors with Post Graduate qualification to serve in rural areas. All these relevant factors have been taken into consideration by the State to award one mark for each year of rural service up to the maximum of 10 marks. It is our duty to mention that even in Tirthani's case, the Hon'ble Supreme Court has cautioned that the weightage should not be irrational.

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16. It is also brought to our notice that a learned single Judge of this Court, in W.P. Nos.23607 of 2005 etc. Batch, dated 08.09.2005, following the decision of the Apex Court in Tirthani's case, upheld the stand taken by the State, rejected the similar claim of the petitioners therein and dismissed the Writ Petitions. The said decision is in terms of the law laid down by the Supreme Court in Tirthani's case.

17. It is relevant to point out that in CDJ 2001 SC 456 (Pre-P.G.Medical Sangarsh Committee vs. Dr. Bajrang Soni), the Hon'ble Supreme Court, while giving some sort of preference to the in-service candidates, has observed as follows:-

> " 7. …… The doctors, who are in-service candidates in various medical institutions run and maintained by the Government or Government Departments, have wide area and horizon of exposure on the practical side and they may not have the required extra time to keep themselves afresh on the theoretical side like an open candidate who may have sufficient time at his disposal to plod through books. The in-service candidates in contrast to the fresh or open candidates have to spend much of their time on attending and treating the patients in the Hospitals they serve gaining excellence on the practical side and, in our view, they would constitute a distinct class by themselves to be given a special treatment and no grievance can be made out on the ground that the minimum eligibility marks for their selection in respect of seats earmarked for them should also be the same as that of the fresh or open candidates. We could see no discrimination or arbitrariness involved in the special provision made to meet a just and appropriate need in public interest. "

18. In CDJ 2001 SC 046 (K.Duraisamy vs. State of Tamil Nadu), the Supreme Court has held that a separate categorization for allotment of seats with a particular object to accommodate different categories cannot be termed as reservation. It is also pointed out that mere use of word 'reservation' per se does not have the consequence of ipso facto applying the entire mechanism underlying the constitutional concept of a protective reservation of BC or S.C./S.T candidates.

19. On a thorough and careful analysis, we find that this is a case which has no attachment to the arena of reservation rather it is knotted to the weightage being assigned to the inservice candidates. We make it clear that had it been a case relating to

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reservation, our view definitely would have differed. It is well known that though our Nation is competing with other developing countries in all fields, it is unfortunate that sophisticated medical facilities are either far-reaching or remain to be a mirage to the rural areas. One of the reasons ascribed is the reluctance on the part of the Medicos as they are not temperamentally inclined to go and live in rural areas so as to make their services available to the rural population. Everyone owes social responsibility and in particular those who render essential services owe more than others. The vital aspect is, when Doctors come forward to serve in rural areas; and the Government, in order to motivate them, offer weightage to their service in rural areas in the matter of admission to super speciality courses keeping in view that they would earn higher professional qualification, which in turn would reflect upon the availability of advanced medical facilities in rural areas; definitely, such constructive decision made by the Government cannot be faulted with but should be welcomed. It has to be borne in mind that such weightage would efface the view that the Doctors opted to serve in rural areas could not have any exposure to higher techniques in medical science. The only important aspect is, the Government shall take extraordinary care to see that the weightage assigned is reasonable and worked out on a rational basis.

In this view of the matter and in the light of the decisions of the Supreme Court referred to above, we do not find any merit in the claim made by the petitioner. Consequently, the Writ Petition is dismissed. No costs. Connected Miscellaneous Petition is also dismissed.

JI.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary, The Selection Committee, The Director of Medical Education, No.162, E.V.R. Periyar High Road, Kilpauk, Chennai-10.

2. The Secretary to Government, Health Department, Government of Tamil Nadu, Fort St. George, Chennai-9.

+ 1 cc to M/s. Siraj & Siraj, Advocate SR No. 38396
+ 1 cc to Government Pleader, High Court, Madras 38664

KLT(CO) SR/30.8.2006

Order in
W.P. No.20341/2006 & connected M.P.

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